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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

20 Cr. 440 (JGK)

5 ARIK LEV,

6 Defendant.

Plea (via telephone)

7 -----x

8 New York, N.Y.  
9 December 7, 2020  
10:00 a.m.

10 Before:

11 HON. JOHN G. KOELTL,

12 District Judge

13 APPEARANCES

14 AUDREY STRAUSS

15 Acting United States Attorney for  
the Southern District of New York

16 BY: JACOB R. FIDDELMAN

Assistant United States Attorney

17 COVINGTON & BURLING LLP

18 Attorneys for Defendant

19 BY: ALAN M. VINEGRAD

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(Case called; appearances noted)

THE COURT: Good morning.

I note that Mr. Lev is present.

All right. We're doing the proceeding this morning by videoconference. There's a national emergency as a result of the pandemic. There's a court emergency also, which our chief judge has declared, as a result of the pandemic. The interests of justice would be harmed if we didn't go forward with the proceeding today because this is a criminal proceeding, and I understand that there's a desire to have the defendant enter a plea to a superseding information. We can't all be present in court because we've restricted in-person court proceedings in the courthouse.

I understand that the defendant has consented that the proceeding may proceed by videoconference. I'm not sure whether the defendant has signed a written waiver yet or authorized his attorney to do that.

Mr. Vinegrad.

MR. VINEGRAD: I mean I can sign it. It hasn't been tendered to me, but I'm happy to execute it promptly upon the end of this proceeding today.

THE COURT: OK. Fine. Mr. Fletcher will send you a copy and consent will then be filed.

Meanwhile, Mr. Lev, do you agree knowingly and voluntarily to have this proceeding by videoconference and to

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1 waive your right to be physically present for the conference?

2 Mr. Lev.

3 THE DEFENDANT: Do you hear me?

4 THE COURT: Mr. Lev, do you agree that the conference  
5 can proceed by videoconference, and do you waive your right to  
6 be present physically --

7 THE DEFENDANT: Yes.

8 THE COURT: -- in court for this proceeding?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: OK. I find that the defendant has  
11 consented knowingly and voluntarily.

12 I should also add at the outset, Mr. Lev, if at any  
13 time you want to consult with your lawyer, Mr. Vinegrad, just  
14 let us know and we'll make arrangements so that you and your  
15 lawyer can consult privately without anyone else listening in.  
16 And similarly, if Mr. Vinegrad wants to talk to you, he can do  
17 that. Just let us know.

18 Do you understand, Mr. Lev?

19 THE DEFENDANT: Yes, your Honor. Thank you.

20 THE COURT: OK.

21 Mr. Vinegrad.

22 MR. VINEGRAD: Yes, I understand.

23 THE COURT: I should also point out at the outset  
24 Mr. Vinegrad is from Covington. I know people personally and  
25 professionally at Covington. My deputy once applied for a job

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1 at Covington, unsuccessfully. Nothing about that affects  
2 anything that I do in the case, but I bring those connections  
3 to you at the outset.

4 As another preliminary matter, I don't believe that  
5 I've had the opportunity to get together with all of you after  
6 Federal Rule of Criminal Procedure 5 was amended, so let me --

7 That's correct, right; I haven't spoken to you.

8 MR. VINEGRAD: Correct, your Honor.

9 THE COURT: OK. Pursuant to Federal Rule of Criminal  
10 Procedure 5(f), I remind the government of its obligation,  
11 under *Brady v. Maryland* and its progeny, to disclose to the  
12 defense all information, whether admissible or not, that is  
13 favorable to the defendant, material either to guilt or to  
14 punishment and known to the government. The government must  
15 make good-faith efforts to disclose such information to the  
16 defense as soon as reasonably possible after its existence  
17 becomes known to the government.

18 As part of these obligations, the government must  
19 disclose information that can be used to impeach the trial  
20 testimony of a government witness within the meaning of *Giglio*  
21 *v. United States* and its progeny and must do so sufficiently --

22 Whoops. We may have lost -- the government just left  
23 the meeting so we'll have to wait until the connection with the  
24 government is reestablished.

25 So much for the efficiency of Skype for Business.

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1 MR. VINEGRAD: I've had a lot more success, your  
2 Honor, with Zoom. I know it wasn't getting a lot of favorable  
3 feedback back in March and April, but I think they've improved,  
4 and that, from my experience, has been the mechanism of choice.  
5 I'm trying hard to convince my law firm of the same.

6 THE COURT: I've had good experience with Zoom also.

7 MR. VINEGRAD: Yeah, so -- I assume it's OK if we chat  
8 until the government comes back. I mean I just actually  
9 presided over a mock trial.

10 THE COURT: I should stop.

11 MR. VINEGRAD: That's fine.

12 MR. FIDDELMAN: Hello. This is Jacob Fiddelman again.  
13 I was disconnected by the system. I apologize.

14 THE COURT: No problem. We don't have your video.

15 MR. FIDDELMAN: Yes, your Honor.

16 For some reason when I try and rejoin with the video  
17 I'm now getting a message that there's a Skype outage. I  
18 dialed in by telephone so that the proceeding was not further  
19 delayed, and I'll ask, with the Court's permission, to permit  
20 me to simply appear by telephone so that the proceeding can  
21 continue.

22 THE COURT: All right. That's very gracious.

23 Does the defense have any objection to that?

24 MR. VINEGRAD: No, your Honor.

25 THE COURT: OK. We'll proceed.

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1 In your absence, Mr. Fiddelman, we were just  
2 commenting that there are problems with Skype and that people's  
3 experience with Zoom has been better.

4 MR. FIDDELMAN: Yeah, I would agree with that, your  
5 Honor, in my personal experience.

6 THE COURT: OK.

7 Where I was was I was reading the warning under  
8 current Rule of Criminal Procedure 5(f).

9 I saw the point at which you, Mr. Fiddelman, lost  
10 contact with us, and it was towards the beginning of that  
11 warning, so I'll -- is that correct?

12 MR. FIDDELMAN: Yes, that's correct.

13 THE COURT: OK. So I'll start at the beginning with  
14 the warning.

15 Pursuant to Federal Rule of Criminal Procedure 5(f), I  
16 remind the government of its obligation, under *Brady v.*  
17 *Maryland* and its progeny, to disclose to the defense all  
18 information, whether admissible or not, that is "favorable to"  
19 the defendant, "material either to guilt or to punishment," and  
20 known to the government. The government must make good-faith  
21 efforts to disclose such information to the defense as soon as  
22 reasonably possible after its existence becomes known to the  
23 government.

24 As part of these obligations, the government must  
25 disclose information that can be used to impeach the trial

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1 testimony of a government witness, within the meaning of *Giglio*  
2 *v. United States* and its progeny, and must do so sufficiently  
3 in advance of trial in order for the defendant to make  
4 effective use of it at trial.

5 I remind you that these obligations are continuing  
6 ones and that they apply to information whether or not the  
7 government credits it. I further remind the government that,  
8 for these purposes, "the government" includes any federal,  
9 state and local prosecutors; law enforcement officers and other  
10 officials who have participated in the investigation and  
11 prosecution of the charged offense or offenses, whether or not  
12 such officials are still part of the team; that the government  
13 has an affirmative obligation to seek from these sources all  
14 information subject to disclosure.

15 Finally, I caution the government that if it fails to  
16 comply with this order any number of consequences may follow:

17 One, I may order production of information and specify  
18 the terms and conditions of such production;

19 Two, I may grant a continuance;

20 Three, I may impose evidentiary sanctions;

21 Four, I may impose sanctions on any responsible lawyer  
22 for the government;

23 Five, I may dismiss charges before trial or vacate a  
24 conviction after trial or a guilty plea; or

25 Six, I may enter any other order that is just under

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1 the circumstances.

2 Mr. Fiddelman, do you understand these obligations and  
3 confirm that you have fulfilled or will fulfill them?

4 MR. FIDDELMAN: Yes, your Honor, I can confirm. Thank  
5 you.

6 THE COURT: OK. In accordance with Rule (f), I will  
7 check the docket sheet to see if I've already entered a written  
8 order confirming the government's *Brady* obligations, and if  
9 not, I'll enter such an order following this proceeding.

10 Do the parties know, by the way, if I've already  
11 entered the 5(f) order?

12 MR. FIDDELMAN: I am looking right now, your Honor.  
13 One moment, please.

14 It looks like your Honor has.

15 THE COURT: OK. I have entered the order already?

16 MR. FIDDELMAN: Yes, your Honor. You have.

17 THE COURT: OK. Great. Thank you.

18 Mr. Fiddelman, tell me where we are.

19 MR. FIDDELMAN: So, your Honor, the parties have  
20 reached a proposed disposition that involves the defendant  
21 waiving indictment, agreeing to proceed by a superseding  
22 information and entering a plea of guilty to that one-count  
23 superseding information charging a violation of 18 U.S.C.  
24 Section 371.

25 THE COURT: All right. In the papers I have before



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1 me, I don't have the waiver. Has the defendant entered the  
2 waiver?

3 MR. FIDDELMAN: Yes, your Honor, he has. It was  
4 transmitted to Mr. Fletcher by email over the weekend, I  
5 believe. I would be happy to resend it.

6 THE DEPUTY CLERK: All right. The clerk thought that  
7 was forwarded, but let me --

8 THE COURT: It may have been and I may not have  
9 checked my email, so if you'd just take a moment to bring it  
10 in.

11 Mr. Fletcher is just outside the courtroom.

12 THE DEPUTY CLERK: All right. Let's see.

13 MR. FIDDELMAN: Your Honor, attached to the same email  
14 was a copy of the plea agreement signed by the defense, so the  
15 copy of the plea agreement that the Court has may not have been  
16 signed by the defense yet, and so that additional document may  
17 need to be printed and brought to the Court.

18 THE COURT: OK. Yes, I have the superseding  
19 information and the November 17 plea agreement signed by the  
20 government but not by the defense.

21 THE DEPUTY CLERK: The clerk is printing out the  
22 document as we speak. The clerk will execute the waiver as a  
23 witness and will submit it to the Court, who is in the  
24 courtroom.

25 THE COURT: OK. There's no one in the courtroom but

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1 me, so --

2 THE DEPUTY CLERK: Yes.

3 THE COURT: All right. I will include the arraignment  
4 on the superseding information together with the allocution on  
5 the guilty plea.

6 I take it, Mr. Vinegrad, that the defendant wishes to  
7 waive indictment, agree to proceed by information and enter a  
8 plea of guilty to the superseding information.

9 MR. VINEGRAD: Yes, your Honor.

10 THE COURT: OK.

11 Mr. Fletcher, please administer the oath to the  
12 defendant.

13 THE DEPUTY CLERK: Mr. Lev, would you please raise  
14 your right hand.

15 You do so solemnly swear that what you say to this  
16 Court in this proceeding shall be true and accurate, so help  
17 you God?

18 THE DEFENDANT: I hereby affirm.

19 THE DEPUTY CLERK: Mr. Lev? Mr. Lev, can we hear you?  
20 We can't hear you. Can you unmute?

21 THE COURT: No. I heard Mr. Lev say, "I hereby  
22 affirm," but you can ask again. Just --

23 THE DEPUTY CLERK: OK.

24 Mr. Lev, do you hereby affirm that what you say to  
25 this Court in this proceeding shall be true and accurate?

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1 THE COURT: Now I don't hear.

2 THE DEFENDANT: Hear me now?

3 THE DEPUTY CLERK: Yes. I'll re-administer.

4 THE DEFENDANT: Yes.

5 THE COURT: Thank you.

6 THE DEPUTY CLERK: Do you hereby affirm that what you  
7 say to this Court in this proceeding shall be true and  
8 accurate?

9 THE DEFENDANT: Yes, sir. Yes, your Honor, I will.

10 THE DEPUTY CLERK: You can put your hand down.

11 Please state your name for the record, your full name.

12 THE DEFENDANT: My name is Arik Lev.

13 THE DEPUTY CLERK: Thank you.

14 THE COURT: Mr. Lev, do you understand that you are  
15 now under oath and that if you answer any of my questions  
16 falsely, your false or untrue answers may later be used against  
17 you in another prosecution for or making a false statement?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Tell me your full name, please.

20 THE DEFENDANT: My name is Arik Lev.

21 THE COURT: How old are you?

22 THE DEFENDANT: 48.

23 THE COURT: 48?

24 THE DEFENDANT: Yes, sir. Yes, your Honor.

25 THE COURT: OK. How far did you go in school?

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1 THE DEFENDANT: High school.

2 THE COURT: Are you a citizen of the United States?

3 THE DEFENDANT: No, your Honor. I'm on a green card.

4 My wife and my kids are citizens.

5 THE COURT: Are you able to speak and understand  
6 English?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: Are you now or have you recently been  
9 under the care of a doctor or a psychiatrist?

10 THE DEFENDANT: Not, your Honor.

11 THE COURT: Have you ever been treated or hospitalized  
12 for any mental illness or any type of addiction, including drug  
13 or alcohol addiction?

14 THE DEFENDANT: Not, your Honor.

15 THE COURT: In the past 24 hours, have you taken any  
16 drugs, medicine or pills, or have you drunk any alcohol?

17 THE DEFENDANT: No, your Honor.

18 THE COURT: Is your mind clear today?

19 THE DEFENDANT: Yes, sir. Yes, your Honor.

20 THE COURT: Are you feeling all right today?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: Do either counsel have any doubt as to the  
23 defendant's competence to waive indictment, agree to proceed by  
24 information and enter a plea of guilty to the information at  
25 this time?

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1 Mr. Vinegrad.

2 MR. VINEGRAD: No, your Honor.

3 THE COURT: Mr. Fiddelman.

4 MR. FIDDELMAN: No, your Honor.

5 THE COURT: Mr. Lev, Mr. Vinegrad, your lawyer, has  
6 informed me that you wish to enter -- that you wish to waive  
7 indictment, agree to proceed by information and enter a plea of  
8 guilty to the superseding information.

9 Is that what you wish to do?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Have you had a full opportunity to discuss  
12 your case with Mr. Vinegrad and to discuss the consequences of  
13 waiving indictment, agreeing to proceed by information and  
14 entering a plea of guilty to the superseding information?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Are you satisfied with Mr. Vinegrad and  
17 his representation of you?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: On the basis of Mr. Lev's responses to my  
20 questions and my observations of his demeanor, I find that he  
21 is fully competent to enter an informed plea at this time.

22 Now, Mr. Lev, before I accept any plea from you, I'm  
23 going to be asking you certain questions. My questions are  
24 intended to satisfy me that you wish to enter a plea of guilty  
25 because you are, in fact, guilty and that you fully understand

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1 the consequences of your plea, and furthermore, that you are  
2 pleading guilty knowingly and voluntarily and that there's  
3 independent basis in fact for your plea.

4 Do you understand that?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: I'm now going to describe to you certain  
7 rights that you have under the Constitution and laws of the  
8 United States, which rights you will be giving up if you enter  
9 a plea of guilty. Please listen to me very carefully. If  
10 there's anything that I say that you don't understand, please  
11 ask me to stop and either I or Mr. Vinegrad will explain it to  
12 you more fully. All right?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Mr. Lev, under the Constitution and laws  
15 of the United States, you have a right to a speedy and public  
16 trial by a jury on the charges against you, which are contained  
17 in the superseding information.

18 Do you understand that?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: If there were a trial, you would be  
21 presumed to be innocent and the government would be required to  
22 prove you guilty by competent evidence and beyond a reasonable  
23 doubt. You would not have to prove that you were innocent at  
24 trial.

25 Do you understand that?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: If there were a trial, a jury composed of  
3 12 people selected from this district would have to agree  
4 unanimously that you were guilty.

5 Do you understand that?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: If there were a trial, you would have the  
8 right to be represented by a lawyer, and if you could not  
9 afford a lawyer, a lawyer would be provided to you free of  
10 cost.

11 Do you understand that?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: In fact, Mr. Lev, you have a right to be  
14 represented by a lawyer at trial and at every other stage of  
15 the proceeding, and if you cannot afford a lawyer, a lawyer  
16 would be provided to you free of cost.

17 Do you understand that?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: If there were a trial, you would have the  
20 right to see and hear all of the witnesses against you, and  
21 your attorney could cross-examine them. You would have a right  
22 to have your attorney object to the government's evidence and  
23 offer evidence on your behalf if you so desired, and you would  
24 have the right to have subpoenas issued or other compulsory  
25 process used to compel witnesses to testify in your defense,

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1 and you would not be required to testify.

2 Do you understand all of that?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: If there were a trial, you would have the  
5 right to testify if you wanted to, but no one could force you  
6 to testify if you didn't want to, and furthermore, no inference  
7 or suggestion of guilt could be drawn if you chose not to  
8 testify at trial.

9 Do you understand that?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Mr. Lev, do you understand each and every  
12 one of the rights that I've described to you?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Do you have any questions about any of  
15 those rights?

16 THE DEFENDANT: No, not, your Honor.

17 THE COURT: Do you understand that by entering a plea  
18 of guilty today, you are giving up each and every one of those  
19 rights; that you are waiving those rights and that you will  
20 have no trial?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: Do you understand that you can change your  
23 mind right now and refuse to enter a plea of guilty? You don't  
24 have to enter this plea if you don't want to for any reason at  
25 all.



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Do you understand that completely?

THE DEFENDANT: Yes, your Honor.

THE COURT: Now, Mr. Lev, you've received a copy of the superseding information against you, is that correct?

THE DEFENDANT: Yes, your Honor.

THE COURT: All right. Now, I have a copy of a waiver of indictment. It says, "United States of America v. Arik Lev, the above-named defendant, who is accused of violating Title 18, United States Code, Section 371, being advised of the nature of the charge and of his rights, hereby waives in open court prosecution by indictment and consents that the proceeding may be by information instead of by indictment."

This appears to be signed by you and Mr. Vinegrad. It's dated December the 7th, and it's witnessed by Mr. Fletcher.

Now, Mr. Lev, have you signed this waiver of indictment?

THE DEFENDANT: Yes, your Honor.

THE COURT: Before you signed it, did you discuss it with your lawyer?

THE DEFENDANT: Yes, your Honor.

THE COURT: Did he explain it to you?

THE DEFENDANT: Yes, your Honor.

THE COURT: Do you understand what you are doing?

THE DEFENDANT: Yes, your Honor.

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1 THE COURT: Do you understand that you are under  
2 absolutely no obligation to waive indictment and agree to  
3 proceed by information?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Do you understand that if you did not  
6 waive indictment and if the government wanted to prosecute you  
7 on the charge which is contained in the information, the  
8 government would have to present its case to a grand jury,  
9 which may or may not indict you?

10 THE DEFENDANT: I understand, your Honor.

11 THE COURT: Do you understand that by signing this  
12 waiver of indictment, you have given up your right to have your  
13 case presented to a grand jury?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Do you understand what a grand jury is?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Did anyone make any threats or promises to  
18 you to get you to waive indictment and agree to proceed by  
19 information?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Did you sign this waiver of indictment  
22 knowingly and voluntarily?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: I find that the defendant's waiver of  
25 indictment is knowing and voluntary.

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1           Now, Mr. Lev, you've told me that you've seen a copy  
2 of the superseding information against you. Is that correct?

3           THE DEFENDANT: Yes, your Honor.

4           THE COURT: Have you discussed it with your lawyer?

5           THE DEFENDANT: Yes, your Honor.

6           THE COURT: Do you want me to read it aloud to you in  
7 open court, or do you wish to give up -- or waive -- the  
8 reading of the information?

9           THE DEFENDANT: I wish to give up this reading because  
10 my lawyer discussed with me. Thank you.

11           THE COURT: OK. All right. I'm going to go over the  
12 information with you in any event because I want to make sure  
13 that you understand what the government would be required to  
14 prove beyond a reasonable doubt before you could be convicted  
15 of the charge at trial, and I also want to make sure that you  
16 understand what the maximum penalties are for the charge.

17           The information charges a conspiracy to commit bank  
18 fraud and wire fraud. It charges, in substance, that from at  
19 least in or about January 2018 up to and including at least in  
20 or about November 2019, in the Southern District of New York  
21 and elsewhere, Arik Lev, the defendant, and others known and  
22 unknown, willfully and knowingly did combine, conspire,  
23 confederate and agree together and with each other to commit  
24 offenses against the United States, to wit, wire fraud, in  
25 violation of Title 18, United States Code, Section 1343, and

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1 bank fraud, in violation of Title 18, United States Code,  
2 Section 1344. It was a part and an object of the conspiracy  
3 that Arik Lev, the defendant, and others known and unknown,  
4 willfully and knowingly, having devised and intending to devise  
5 a scheme and artifice to defraud and for obtaining money and  
6 property by means of false and fraudulent pretenses  
7 representations and promises would and did transmit and cause  
8 to be transmitted by means of wire and radio communication in  
9 interstate and foreign commerce writings, signs, signals,  
10 pictures and sounds for the purpose of executing such scheme  
11 and artifice, in violation of Title 18, United States Code,  
12 Section 1343.

13 In furtherance of the conspiracy and to effect the  
14 illegal object thereof, the following overt acts, among  
15 others -- it says others, but there's only one charged --  
16 following overt act, among others, was committed in the  
17 Southern District of New York and elsewhere, namely, on or  
18 about February 16, 2018, Arik Lev, the defendant, caused to be  
19 submitted an electronic loan application for a vehicle  
20 purchased on behalf of a straw purchaser that contained false  
21 and fraudulent misrepresentations after causing the straw  
22 purchaser to travel through the Southern District of New York  
23 to the car dealership at which the loan application was  
24 prepared and submitted, in violation of Title 18, United States  
25 Code, Section 371.

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1 Do you understand that's a summary of the charge  
2 against you in Count One of the superseding information?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: And you understand if you did not plead  
5 guilty the government would be required to prove beyond a  
6 reasonable doubt at trial:

7 First, that two or more persons entered into the  
8 unlawful agreement charged in the information, starting in or  
9 about January 2018;

10 Second, that you, the defendant, knowingly and  
11 willfully became a member of the conspiracy;

12 Third, that one of the members of the conspiracy  
13 knowingly committed at one overt act charged in the information  
14 in furtherance, in order to further some objective of the  
15 conspiracy.

16 Do you understand the government would be required to  
17 prove all of that beyond a reasonable doubt at trial?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Do you understand that the maximum penalty  
20 for the crime charged in Count One is a maximum of five years'  
21 imprisonment; a maximum term of three years' supervised  
22 release; a maximum fine of the greatest of \$250,000 or twice  
23 the gross pecuniary gain derived from the offense or twice the  
24 gross pecuniary loss to a person or persons other than yourself  
25 as a result of the offense; and a \$100 mandatory special

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1 assessment?

2 Do you understand that's the maximum penalty for the  
3 crime charged in Count One of the information?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Do you also understand that when I talk  
6 about supervised release, supervised release means that you  
7 will be subject to monitoring when you are released from prison  
8 and that the monitoring is to be under terms and conditions  
9 which could lead to reimprisonment without a jury trial if you  
10 violate them?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Do you understand that if you violated the  
13 terms of supervised release and were sentenced to prison, you  
14 could be sentenced to prison for the entire term of supervised  
15 release without any credit for any time you had already spent  
16 on supervised release?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Do you also understand that as part of  
19 your sentence I can also order restitution to any person  
20 injured as a result of your criminal conduct?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: The information also includes a forfeiture  
23 allegation. It charges that as a result of committing the  
24 offense charged in Count One, you, the defendant, shall forfeit  
25 to the United States any and all property, real and personal,

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1 that constitutes or is derived from proceeds traceable to the  
2 commission of the offense, including, but not limited to, a sum  
3 of money in United States currency representing the amount of  
4 proceeds traceable to the commission of the offense, and if any  
5 of that forfeitable property cannot be located or has been  
6 transferred or deposited with a third person or placed beyond  
7 the jurisdiction of the court or substantially diminished in  
8 value or commingled with other property, then it's the intent  
9 of the government to seek forfeiture of any other property that  
10 you have up to the value of the forfeitable property.

11 Do you understand that?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: So do you understand that as part of your  
14 sentence I can also order forfeiture?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Do you also understand that if I accept  
17 your guilty plea and adjudge you guilty, that adjudication can  
18 be used to remove you from the United States, to deny you  
19 citizenship, to deny you admission to the United States in the  
20 future?

21 Do you understand that?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: And have you consulted with your lawyer  
24 about the immigration consequences of your guilty plea?

25 THE DEFENDANT: Yes, your Honor.

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1           THE COURT: Do you also understand that if I accept  
2 your guilty plea and adjudge you guilty, that adjudication may  
3 deprive you of valuable civil rights, such as the right to  
4 vote, the right to hold public office, the right to serve on a  
5 jury and the right to possess any kind of firearm?

6           THE DEFENDANT: Yes, your Honor.

7           THE COURT: Now, Mr. Lev, under current law, there are  
8 sentencing guidelines that judges must consult in determining  
9 your sentence. You've spoken to your attorney about the  
10 sentencing guidelines, haven't you?

11          THE DEFENDANT: Yes, your Honor.

12          THE COURT: Do you understand that I, as the  
13 sentencing court, will not be able to determine your guidelines  
14 sentence until after a presentence report has been completed by  
15 the probation department and after you and your lawyer and the  
16 government have had a chance to challenge any of the facts  
17 reported by the probation department?

18          THE DEFENDANT: I understand, your Honor.

19          THE COURT: And do you also understand that even after  
20 it's determined what guideline sentencing range applies in your  
21 case, I have the authority, in some circumstances, to depart  
22 upward or downward from the sentencing guideline range that is  
23 otherwise called for by the guidelines?

24          Do you understand that?

25          THE DEFENDANT: Yes, your Honor.



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1           THE COURT: And even after I've made that  
2 determination of the appropriate guidelines sentencing range,  
3 taking into account any upward or downward departures, I must  
4 then consult other statutory factors in order to arrive at a  
5 final conclusion as to what the appropriate and reasonable  
6 sentence is in your case.

7           Do you --

8           THE DEFENDANT: Yes, your Honor.

9           THE COURT: -- understand that?

10          Do you understand that?

11          THE DEFENDANT: Yes, your Honor. Thank you. Yeah.

12          THE COURT: And do you also understand that if you are  
13 sentenced to prison, parole has been abolished and you will not  
14 be released any earlier on parole?

15          THE DEFENDANT: Yes, your Honor.

16          THE COURT: You paused. Do you understand that? Do  
17 you want me to explain that to you?

18          THE DEFENDANT: Yes, your Honor.

19          THE COURT: OK. There used to be a system, in the  
20 federal system, whereby it was possible for a defendant to be  
21 released substantially before the term of imprisonment had  
22 ended if there was a favorable decision by the parole  
23 commission or the parole board so that the defendant would only  
24 have to spend a fraction of the time that was imposed as a  
25 sentence on the defendant. That system of parole has now been

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1 abolished in the federal system so that when a sentence is  
2 imposed on a defendant, the defendant will serve that sentence  
3 except for what is known as good-time credit, which amounts to  
4 a little less than two months for every full year that the  
5 defendant spends in prison.

6 So I advise you that the system of parole has been  
7 abolished so that you would not be released any earlier on  
8 parole.

9 THE DEFENDANT: I understand, sir. Thank you.

10 THE COURT: OK.

11 THE DEFENDANT: I understand.

12 THE COURT: Do you also understand that if your lawyer  
13 or anyone else has attempted to estimate or predict what your  
14 sentence will be, that their estimate or prediction could be  
15 wrong?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: No one, Mr. Lev -- not your lawyer, not  
18 the government -- can or should give you any assurance of what  
19 your sentence will be since that sentence can only be  
20 determined after the probation department has completed the  
21 presentence report, after I have ruled on any challenges to the  
22 report, and after I've determined what the appropriate and  
23 reasonable sentence is in your case.

24 Do you understand that?

25 THE DEFENDANT: Yes, your Honor.

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1 THE COURT: And do you also understand that even if  
2 your sentence is different from what your lawyer or anyone else  
3 told you that it might be or if it's different from what you  
4 expect it to be, you'll still be bound by your guilty plea and  
5 you will not be allowed to withdraw your plea of guilty?

6 Do you understand that?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: Now, Mr. Lev, I've been given the plea  
9 agreement, which is a November 17, 2020, letter, addressed to  
10 your lawyer, Mr. Vinegrad, from the government. It's signed by  
11 Mr. Fiddelman and approved by Ms. Mermelstein. It appears to  
12 have been signed by you on November the 17th and approved by  
13 Mr. Vinegrad on December 2, 2020. I'll mark that as Court  
14 Exhibit 1.

15 Have you signed this plea agreement?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Did you read the agreement before you  
18 signed it?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Did you discuss it with your lawyer before  
21 you signed it?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Did you fully understand the agreement  
24 before you signed it?

25 THE DEFENDANT: Yes, your Honor.

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1 THE COURT: Does this letter agreement constitute your  
2 complete and total understanding of the entire agreement  
3 between the government, your lawyer and you?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Is everything that you understand about  
6 your plea and your sentence contained in this plea agreement?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: Has anything been left out?

9 THE DEFENDANT: There's not, your Honor. The judge,  
10 just the sealing. That's what I understand.

11 THE COURT: OK. You're right. The judge is not bound  
12 by this plea agreement at all.

13 Do you understand that?

14 THE DEFENDANT: Yes. Yes, your Honor.

15 THE COURT: OK. Has anyone offered you any  
16 inducements or threatened you or forced you to plead guilty or  
17 to enter into the plea agreement?

18 THE DEFENDANT: Not, your Honor.

19 THE COURT: There is a provision in the plea agreement  
20 that says, "It is agreed that the defendant will not file a  
21 direct appeal nor bring a collateral challenge, including, but  
22 not limited to, an application under Title 28, United States  
23 Code, Section 2255 and/or Section 2241 of any sentence within  
24 or below the stipulated guideline range of 33 to 41 months'  
25 imprisonment.

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1 Do you understand that?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: So do you understand that if I sentenced  
4 be to 41 months' imprisonment or less, you have given up your  
5 right to appeal any such sentence or to challenge any such  
6 sentence in any habeas corpus proceeding?

7 Do you understand that?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Do you also understand that you have given  
10 up, or waived, your right to appeal any term of supervised  
11 release of three years or less, any fine of --

12 It says 150,000, but I would have thought it should  
13 read 250,000.

14 MR. FIDDELMAN: Your Honor --

15 MR. VINEGRAD: Sorry.

16 THE COURT: Go ahead, please.

17 MR. FIDDELMAN: So, the \$150,000 number is correct.  
18 The waiver applies to the top of the guidelines range for  
19 the --

20 THE COURT: You're right.

21 MR. FIDDELMAN: -- rather than the statutory maximum.

22 THE COURT: Thank you. You're right. You're right.

23 Mr. Lev, do you understand that you've waived any  
24 right to appeal any fine of \$150,000 or less and any special  
25 assessment of \$100 or less?

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1 Do you --

2 THE DEFENDANT: Yes, I do.

3 THE COURT: -- understand?

4 OK.

5 The plea agreement also reaffirms that, as I've told  
6 you, that because you're not a citizen of the United States,  
7 your guilty plea and conviction make it very likely that you  
8 will be removed from the United States and that you're  
9 presumptively, and that's presumptively mandatory and that at a  
10 minimum you are at risk of being removed or suffering other  
11 adverse immigration consequences.

12 Do you understand that?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: And it affirms that you've discussed the  
15 possible immigration consequences, including removal, as a  
16 result of your guilty plea and conviction with your lawyer. Is  
17 that right?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: OK. As you mentioned before, you  
20 understand that the Court is not bound by the plea agreement or  
21 by any of the provisions of the plea agreement; the Court has  
22 to make an independent determination of the appropriate  
23 sentence in your case, and even if that sentence differs from  
24 anything that's contained in the plea agreement, you will still  
25 be bound by your guilty plea and you will not be allowed to

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1 withdraw your plea of guilty.

2 Do you understand that?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Mr. Vinegrad, do you know of any valid  
5 defense that would prevail at the trial of Mr. Lev?

6 MR. VINEGRAD: No, your Honor.

7 THE COURT: Do you know of any reason why Mr. Lev  
8 should not be permitted to plead guilty?

9 MR. VINEGRAD: No, your Honor.

10 THE COURT: OK.

11 Mr. Lev, tell me what you did in connection with the  
12 crime to which you are entering a plea of guilty.

13 THE DEFENDANT: So, your Honor, in 2018 to '19, I was  
14 agree with other people to do a transactions that basically  
15 buy, buy cars and pay for them and move, put them into a rental  
16 company without to tell it to the financial institute for the,  
17 to the bank that loan money for the vehicle, that the car will  
18 be used for, to do rental, rent a car. And has make a false  
19 statements to the financial company and they will -- we also  
20 didn't tell them that we, I will pay the payments of the  
21 vehicle, not the people that bought the car. So we didn't tell  
22 them that, who was going to pay for the vehicle, that I was the  
23 one that's paying for the vehicle, and I understand that was --  
24 Ivan was involved in applications to the banks to approve the  
25 transactions. And I'm very sorry that's happen.

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1 I wasn't aware that, in that time that I did something  
2 wrong. I'm fully aware that this was wrong, and if I had the  
3 chance again, I will not do it again, anything connected with  
4 something like that. That's why I want to take responsibility  
5 on my conduct, and I'm sorry for that.

6 THE COURT: OK.

7 MR. FIDDELMAN: Your Honor, I'm sorry to interrupt. I  
8 just have a question.

9 I'm not sure I understood something that the defendant  
10 said. I thought he said he was not aware at the time that he  
11 was doing something wrong, but I may have misheard it.

12 THE COURT: I was going to follow up, but as long as  
13 the government asks the question, Mr. Lev --

14 THE DEFENDANT: Yeah, I was aware that I do something  
15 wrong, so --

16 THE COURT: At the time.

17 THE DEFENDANT: At the time that I did, we did  
18 something wrong by telling -- we didn't tell the bank, the  
19 financial institute what we doing, what we going to use the car  
20 for. Yes, sir. I was aware about that, and that's why I want  
21 to plead guilty for.

22 THE COURT: All right. Let me go back.

23 Between 2018 and 2019, you agreed with others to do  
24 transactions that would, the object of which was to buy cars,  
25 is that right?



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1 THE DEFENDANT: Yes. Yes, your Honor.

2 THE COURT: OK.

3 THE DEFENDANT: Buy them and --

4 THE COURT: And the cars would be put into a rental  
5 company.

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: And in order to buy the cars, there were  
8 transaction documents that were submitted to banks in order to  
9 finance the purchase of the cars.

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Is that right?

12 THE DEFENDANT: Yes, your Honor, and I paid for the  
13 cars and the bank paid for the cars.

14 THE COURT: OK. You paid for the car. The banks paid  
15 for the cars. You agreed to make payments to the banks in  
16 order to pay for the cars, but the financing documents  
17 indicated that other people were going to be making the  
18 payments rather than you.

19 THE DEFENDANT: Exactly, your Honor. That's exact --

20 THE COURT: And those were false statements to the  
21 banks.

22 THE DEFENDANT: Yes, your Honor. That I was the one  
23 that paying for the vehicle.

24 THE COURT: You were the one who was actually paying  
25 for the vehicles, but other people were listed as the people

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1 who were paying for the vehicles.

2 THE DEFENDANT: Has responsibility for the vehicle,  
3 yes, sir. Yes, your Honor.

4 THE COURT: Has responsibility.

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: And it was not disclosed to the bank that  
7 the cars were not being used for personal use but were going  
8 into a rental car company.

9 THE DEFENDANT: Yes, your Honor, exactly.

10 THE COURT: And the financial documents otherwise  
11 would have required that that be disclosed, that the cars were  
12 not being used for personal use but were being used for a  
13 rental car company, is that correct?

14 THE DEFENDANT: Uh, yes. Yes, your Honor.

15 THE COURT: OK. And the information says that one  
16 overt act in furtherance of the conspiracy was that on or about  
17 February 16, 2018, you caused to be submitted an electronic  
18 loan application for a vehicle purchase on behalf of a straw  
19 purchaser, someone acting as a purchaser who was not really a  
20 purchaser, and that the application contained false and  
21 fraudulent misrepresentations, after causing the straw  
22 purchaser to travel through the Southern District of New York  
23 to the car dealership at which the loan application was  
24 prepared and submitted. Did you do that?

25 THE DEFENDANT: Yes, your Honor.

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1 THE COURT: OK. And --

2 THE DEFENDANT: Me or others.

3 THE COURT: I'm sorry.

4 THE DEFENDANT: It's me or others that's involved in  
5 this, did that.

6 THE COURT: OK.

7 THE DEFENDANT: Which one I did or other did it, but I  
8 was involved in that. That's why I'm here.

9 THE COURT: You knew that there were straw purchasers,  
10 people who were not really purchasing --

11 THE DEFENDANT: Yes.

12 THE COURT: -- in the cars for themselves --

13 THE DEFENDANT: Yes.

14 THE COURT: -- who traveled to the car dealership.  
15 The car dealership was in New Jersey, was it?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: And --

18 THE DEFENDANT: In New Jersey and in New York.

19 THE COURT: Where in New York?

20 THE DEFENDANT: Was in Brooklyn, was in New Jersey,  
21 and probably some of the people pass through Manhattan to, to  
22 go to the other district, in New Jersey.

23 THE COURT: OK.

24 THE DEFENDANT: Not --

25 THE COURT: You knew that people were --

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1 THE DEFENDANT: Going --

2 THE COURT: -- were traveling through Manhattan or the  
3 Bronx in order to go to the car dealership in New Jersey to  
4 sign --

5 THE DEFENDANT: Yes.

6 THE COURT: Mr. Vinegrad --

7 THE DEFENDANT: I don't know that.

8 THE COURT: -- is indicating that he's uncomfortable  
9 with this question.

10 MR. VINEGRAD: I mean, obviously, your Honor, could  
11 fully allocute the defendant as your Honor sees fit. Based on  
12 prior discussions with Mr. Lev, without waiving any privileges,  
13 I'm not sure he's in a position to allocute that he knew that a  
14 straw purchaser or purchasers were actually traveling through  
15 the Southern District of New York. We're absolutely prepared  
16 to accept the government's proffer of that, which I understand  
17 they are prepared to make, and for purposes of an acceptable  
18 guilty plea, I do think that is legally sufficient, so that's  
19 why I was --

20 THE COURT: OK.

21 MR. VINEGRAD: -- my head.

22 THE COURT: I don't want Mr. Lev to say anything that  
23 is not accurate or that he doesn't know.

24 You probably understand, Mr. Lev, that the reason for  
25 the questions I'm asking is a technical concept of venue. A

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1 defendant has the right to be prosecuted for a crime in a  
2 district where the crime occurred, and a crime occurs -- the  
3 crime of conspiracy occurs where the conspiracy is formed or  
4 where any overt act in furtherance of the conspiracy is  
5 committed. And an overt act can be committed by the defendant  
6 or by any coconspirator.

7 And so one way of committing an overt act would be if  
8 a person moved through or was caused, rather caused to be moved  
9 through the Southern District of New York in furtherance of the  
10 conspiracy. The Southern District of New York includes  
11 Manhattan, the Bronx, Westchester and some northern counties.  
12 It does not include New Jersey.

13 So could the government make a proffer as to why venue  
14 is proper in the Southern District of New York.

15 THE DEFENDANT: Are you asking me for --

16 THE COURT: No, no. I'm asking the government lawyer  
17 to make a statement of how the government would prove venue for  
18 this crime in the Southern District of New York.

19 And the defendant can waive venue. The defendant can  
20 agree that venue would be established and, in any event, could  
21 waive the requirement of venue and agree that the charge could  
22 be prosecuted in the Southern District of New York, but let's  
23 hear from the government how the government would prove venue  
24 at trial.

25 Mr. Fiddelman.

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1 MR. FIDDELMAN: Yes, your Honor. Thank you.

2 The conspiracy in this case involved transactions  
3 occurring at a number of different car dealerships. Some of  
4 those dealerships were in New Jersey, and the defendant's  
5 dealership and rental business was in Brooklyn, New York. The  
6 various transactions in furtherance of the conspiracy involved  
7 events occurring at both locations.

8 With respect to events in New Jersey, those  
9 transactions involved coconspirators -- namely, the codefendant  
10 charged in this case, Ivan Magidov -- and others traveling from  
11 Brooklyn through the Southern District of New York to get to  
12 New Jersey.

13 Vice versa, the occurrences in Brooklyn involved the  
14 straw purchasers, both of whom were New Jersey residents,  
15 traveling through the Southern District of New York to get from  
16 New Jersey to Brooklyn. So there were numerous instances of  
17 travel in furtherance of the conspiracy through the Southern  
18 District of New York.

19 THE COURT: OK.

20 Mr. Lev are you prepared to accept that the government  
21 could prove venue in the Southern District of New York if there  
22 were acts in furtherance of the conspiracy by coconspirators  
23 that occurred in the Southern District of New York; namely,  
24 Manhattan, the Bronx, Westchester, or some northern counties?

25 Brooklyn is not in the Southern District of New York,

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1 nor is New Jersey.

2 THE DEFENDANT: Yes, your Honor. I accept that it's  
3 not me personally who did it, and I wasn't -- yes, sir.

4 THE COURT: OK. And as I said, you're perfectly  
5 prepared to consult with your lawyer at any time.

6 THE DEFENDANT: OK.

7 MR. VINEGRAD: Just to be clear, I think what he's  
8 saying is even though he did not personally travel through the  
9 Southern District of New York and he doesn't know of his  
10 personal knowledge whether other people did, he is agreeable  
11 and prepared to accept the government's proffer on venue.

12 THE DEFENDANT: Yes.

13 THE COURT: OK. All right. And if there's any doubt  
14 about that, does the defendant waive any defense of improper  
15 venue?

16 Mr. Vinegrad.

17 MR. VINEGRAD: The answer -- he does.

18 THE COURT: Do you agree with that, Mr. Lev?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: OK. When you did the acts that you  
21 described to me, did you know that what you were doing was  
22 wrong and illegal?

23 THE DEFENDANT: Yes, your Honor, because the parts are  
24 fitting. Yes, your Honor.

25 THE COURT: I'm sorry.

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1 MR. VINEGRAD: Yes, your Honor. I feel very wrong  
2 about it.

3 THE COURT: OK.

4 Does the government want me to ask any other questions  
5 of the defendant?

6 MR. FIDDELMAN: I don't believe so, your Honor. Thank  
7 you.

8 THE COURT: OK. Tell me what the government's  
9 evidence would be at trial against the defendant.

10 MR. FIDDELMAN: Yes, your Honor.

11 At trial the government would present evidence,  
12 proving beyond a reasonable doubt, that in or about 2018 the  
13 defendant and others were part of a conspiracy to defraud banks  
14 and auto lenders into extending auto loans under false  
15 pretenses.

16 The defendants first purchased high-end automobiles at  
17 auction and then increased the price of those vehicles and  
18 resold them back to himself through undisclosed straw  
19 purchasers who had good personal credit scores. Those  
20 transactions were financed, and the loan applications submitted  
21 on behalf of the straw purchasers falsely stated that the straw  
22 purchasers were buying the vehicles for their own personal use  
23 and were buying them themselves when, in fact, the defendants  
24 had promised to pay the loans on the vehicle, immediately took  
25 possession of each of the vehicles after the straw transaction,



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1 and then used the vehicles to start a street rental business.

2 As a result the defendant both received the loan  
3 proceeds from the bank and also received the vehicle, thereby  
4 stealing the loan proceeds from the bank through fraud. The  
5 defendant then stopped making payments on the vehicles shortly  
6 thereafter, and all of the loans defaulted.

7 The total amount of money that the banks were  
8 defrauded out of in this scheme was in excess of \$1 million.  
9 Some of the banks were FDIC-insured and some of the banks were  
10 located in states other than New York and received false loan  
11 applications over the internet.

12 The defendant, Arik Lev, specifically was one of the  
13 principal architects who supervised the scheme. He owned the  
14 car dealership and rental business that were involved in the  
15 offense, and he purchased the vehicles at auction with his own  
16 money to accomplish this scheme at the outset.

17 He directed one of his employees, codefendant Ivan  
18 Magidov, to prepare and submit several false loan applications  
19 among other tasks.

20 Lev also retained possession of each of the vehicle  
21 and the loan proceeds.

22 And as I previously mentioned, the conspiracy involved  
23 travel through the Southern District of New York by  
24 coconspirators on many occasions in furtherance of the  
25 conspiracy. And the government submits that its evidence as

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1 described would prove the defendant's guilt beyond a reasonable  
2 doubt.

3 THE COURT: Mr. Lev, there are a couple of questions  
4 that I should have asked. You've heard the government say that  
5 the banks that made the loans were insured by the Federal  
6 Deposit Insurance Corporation, which would be an element of the  
7 offense of bank fraud as one of the objects of the conspiracy.

8 Are you prepared to accept that the government could  
9 prove that the banks to which these loan applications were made  
10 were insured by the Federal Deposit Insurance Corporation?

11 THE DEFENDANT: Uh, uh, yes, your Honor. Yes, your  
12 Honor.

13 THE COURT: OK.

14 THE DEFENDANT: I didn't know anybody would get hurt  
15 from these transactions.

16 THE COURT: I'm sorry. I just didn't hear the end.

17 THE DEFENDANT: Yes, your Honor. I say --

18 MR. FIDDELMAN: Your Honor --

19 THE COURT: Yes.

20 MR. FIDDELMAN: I'm sorry.

21 THE COURT: Hold on. The government wanted to say  
22 something.

23 Mr. Fiddelman.

24 MR. FIDDELMAN: Thank you, your Honor.

25 I was just going to say I believe the defendant said

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1 he didn't know anyone was going to get hurt from the  
2 transactions.

3 MR. VINEGRAD: I mean this is on the issue of the  
4 FDIC, I believe.

5 THE DEFENDANT: Yeah.

6 MR. VINEGRAD: So, yeah. OK.

7 Your Honor, I think similar to the venue situation,  
8 Mr. Lev I don't believe can allocute that he knew that one or  
9 more of the financial institutions was a member of the FDIC.  
10 However, he is prepared to accept the government's proffer of  
11 that particular aspect of the charge.

12 THE DEFENDANT: Yes, your Honor. Yes, I am.

13 THE COURT: Do you agree with what your lawyer has  
14 said?

15 THE DEFENDANT: Yes. Uh, yes, your Honor.

16 MR. VINEGRAD: Thank you, your Honor.

17 THE DEFENDANT: Say something.

18 THE COURT: OK.

19 MR. FIDDELMAN: Your Honor --

20 THE COURT: Yes.

21 MR. FIDDELMAN: -- perhaps sort of in light of the  
22 additional comments that the defendant has made it would make  
23 sense for the Court to confirm with the defendant his *mens rea*  
24 at the time of committing the offense. As charged the  
25 defendant is alleged to have conspired to deliberately defraud

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1 auto lenders out of more than a million dollars, and the  
2 defendant has made certain comments during this allocution that  
3 are arguably inconsistent with that. And so I would just ask  
4 that the Court confirm the defendant's *mens rea* and intent in  
5 joining the conspiracy before accepting the plea.

6 THE COURT: OK.

7 Mr. Lev, is it correct that you entered a conspiracy  
8 to deprive banks of a substantial amount of money that you were  
9 not entitled to get from the banks? You submitted and caused  
10 to be submitted applications with statements that were false in  
11 order to get money from the banks that you were not entitled to  
12 get, is that correct?

13 THE DEFENDANT: Yes. Yes, your Honor. I --

14 THE COURT: And you knew that there were false  
15 statements in the applications and you submitted the  
16 applications with the false statements in order to get money  
17 that you were not entitled to get from the banks, is that  
18 correct?

19 THE DEFENDANT: Yes, your Honor. Me or others.  
20 Personally not me. Me or others was involved in that. I was  
21 aware about it, and the mistake, I'm sorry for that. And I've  
22 taken the guilty charge.

23 THE COURT: Well, hold on. Hold on. The reason for  
24 these questions, Mr. Lev, is that you keep adding individual  
25 comments like "this was a mistake."

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1 THE DEFENDANT: Your Honor --

2 THE COURT: No. Hold on. Hold on.

3 The question is whether you personally submitted false  
4 applications, or caused others to submit false applications,  
5 knowing that they contained false statements in order that you  
6 would get money from the banks that you knew that you were not  
7 entitled to get from the banks.

8 THE DEFENDANT: Yes, your Honor. With others, yes,  
9 your Honor. Yes.

10 THE COURT: OK.

11 Mr. Fiddelman, do you want me to ask other questions  
12 of the defendant?

13 MR. FIDDELMAN: No, your Honor. I think that  
14 sufficiently clarifies it. Thank you very much.

15 THE COURT: Sure.

16 There was one other statement by the government that I  
17 wanted to follow up with you, Mr. Lev, and that was with  
18 respect to the issue of wire fraud, which is the second object  
19 of the conspiracy. The government said that you, that their  
20 evidence would show that you caused others to use the internet  
21 to submit the financial applications.

22 THE DEFENDANT: Yes. Yes, your Honor.

23 THE COURT: Did you do that?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: OK.

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1 Does the government want me to ask any other questions  
2 of the defendant?

3 MR. FIDDELMAN: No, your Honor. Thank you very much.

4 THE COURT: OK. Never feel reluctant to make sure  
5 that my allocution is sufficient.

6 THE DEFENDANT: Thank you.

7 MR. FIDDELMAN: Thank you, your Honor. I think that's  
8 sufficient.

9 THE COURT: OK.

10 Mr. Lev, how do you plead to the charge against you in  
11 the superseding information; guilty or not guilty?

12 THE DEFENDANT: I'm guilty, sir, your Honor.

13 THE COURT: Are you pleading guilty because you are,  
14 in fact, guilty?

15 THE DEFENDANT: Yes, your Honor. I'm guilty.

16 THE COURT: Are you pleading guilty voluntarily, of  
17 your own free will?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Before I finally accept the defendant's  
20 plea, Mr. Vinegrad, do you want me to ask any other questions  
21 of the defendant?

22 MR. VINEGRAD: No, your Honor.

23 THE COURT: Do you know of any reason that I should  
24 not accept his plea?

25 MR. VINEGRAD: No, your Honor.

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1 THE COURT: Before I finally accept the defendant's  
2 plea, does the government want me to ask any other questions of  
3 the defendant?

4 MR. FIDDELMAN: No, your Honor.

5 THE COURT: Does the government know of any reason  
6 that I should not accept his plea?

7 MR. FIDDELMAN: No, your Honor, it does not.

8 THE COURT: OK.

9 Mr. Lev, because you acknowledge that you are guilty  
10 as charged in Count One of the superseding information, because  
11 I find that you know your rights and are waiving them knowingly  
12 and voluntarily, because I find that your plea is entered  
13 knowingly and voluntarily and is supported by an independent  
14 basis in fact containing each of the essential elements of the  
15 offense, I accept your guilty plea, and I adjudge you guilty of  
16 the offense to which you have pleaded.

17 Mr. Lev, the probation department will now prepare the  
18 presentence report to assist me in sentencing you. You will be  
19 interviewed by the probation department. It's very important  
20 that the information you provide to the probation department be  
21 truthful and accurate. The presentence report is very  
22 important to me in my decision as to what your sentence will  
23 be.

24 You and your lawyer will have the opportunity to  
25 examine the presentence report, to challenge or comment on

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1 anything contained in the report and then to speak on your  
2 behalf at sentencing.

3 Mr. Fletcher, can we get a date.

4 THE DEPUTY CLERK: Thursday, April 15, at 2:30.

5 THE COURT: April 15 at 2:30 p.m. Is that  
6 satisfactory with everyone?

7 THE DEFENDANT: I'm just checking not Passover.

8 MR. VINEGRAD: I believe it's after Passover.

9 THE DEFENDANT: OK.

10 THE DEPUTY CLERK: Let's do another date.

11 THE COURT: The date's OK with the defense?

12 THE DEPUTY CLERK: Thursday, Thursday, April 2. Oh,  
13 no. Was April 15 Passover, counsel?

14 MR. VINEGRAD: April 15 -- I thought I had said that  
15 April 15 was after Passover.

16 THE DEPUTY CLERK: Oh, OK.

17 MR. VINEGRAD: Which is fine.

18 THE DEPUTY CLERK: OK. April 15 at 2:30.

19 THE COURT: And OK with the government.

20 MR. FIDDELMAN: Yes, your Honor.

21 THE COURT: All right. Sentence April 15 at 2:30 p.m.

22 No applications with respect to bail status.

23 MR. FIDDELMAN: That's correct. The government  
24 consents to the defendant's bail conditions remaining in effect  
25 pending sentencing.



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1 THE COURT: OK. And the defense has no applications  
2 with respect to the bail.

3 MR. VINEGRAD: Not at the moment, Judge. I anticipate  
4 making one shortly having to do with one of Mr. Lev's daughters  
5 and his desire to see her, and she's out of the district. But  
6 I'll do that in writing after consulting with the government.

7 THE COURT: OK. Thank you.

8 MR. VINEGRAD: But thank you.

9 THE COURT: Thank you.

10 Mr. Lev, do you understand that if you fail to return  
11 for sentencing on April 15, 2021, or any adjourned date, you  
12 will be guilty of a criminal act for which you could be  
13 sentenced to prison, totally separate, apart from and in  
14 addition to any other sentence that you may receive for the  
15 crime to which you just entered a plea of guilty?

16 Do you understand that?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Do you also understand that all of the  
19 conditions of your bail have been continued and that the  
20 violation of any of those conditions can have severe  
21 consequences for you?

22 Do you understand that?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: All right.

25 I should add that defense submissions are due 14 days

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1 before sentence; government submissions eight days before  
2 sentence. All right?

3 All right. I look forward to seeing you all -- seeing  
4 all of you -- on the date fixed for sentence or any adjourned  
5 date.

6 Anything further?

7 MR. FIDDELMAN: Not from the government. Thank you.

8 MR. VINEGRAD: Not from the defendant. Thank you.

9 THE COURT: OK.

10 I will return Court Exhibit 1 to the government.  
11 We'll probably put it in the mail or some form of message  
12 service.

13 Thank you, all.

14 MR. FIDDELMAN: Thank you.

15 THE COURT: Bye now. Stay well. Stay safe.

16 (Adjourned)  
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